

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

**FILED**

**MAR 20 2017**

Clerk, U.S. District Court  
District Of Montana  
Missoula

TRACEY R. GODFREY,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendants.

CV 16-108-M-DLC-JCL

ORDER

United States Magistrate Judge Jeremiah C. Lynch entered findings and recommendations in this case on February 23, 2017, recommending that Plaintiff Tracey Godfrey's ("Godfrey") complaint be dismissed. Godfrey did not object to the findings and recommendations, and so has waived the right to de novo review thereof. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Having reviewed the findings and recommendations, the Court finds no

clear error in Judge Lynch's conclusion. Godfrey's complaint fails to state a claim upon which relief may be granted, the claim is barred under judicial immunity, and the complaint is frivolous because it is predicated upon his criminal sentence that the Court has already ruled on in his previous habeas petitions.

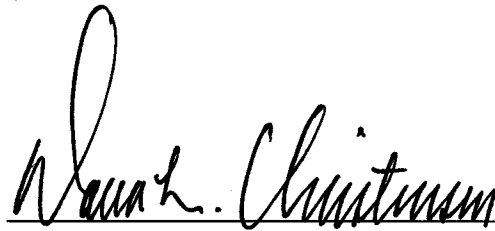
On March 8, 2017, Godfrey filed a motion to refund his filing fee. (Doc. 8). Godfrey contends that because the Court is not going to allow him to pursue his claim, the filing fee must be refunded. However, 28 U.S.C. § 1915 requires that a prisoner who brings a civil action in forma pauperis pay the full amount of the filing fee. As Godfrey was granted leave to proceed in forma pauperis, he must be charged the filing fee.

Accordingly, IT IS ORDERED that Judge Lynch's Findings and Recommendations (Doc. 7) are ADOPTED IN FULL. This case is DISMISSED.

IT IS FURTHER ORDERED that Plaintiff Godfrey's Motion to Refund Filing Fee (Doc. 8) is DENIED.

IT IS FURTHER ORDERED that the Clerk of Court shall CLOSE this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure. The Clerk of Court is also directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith.

DATED this 20<sup>th</sup> day of March, 2017.

A handwritten signature in cursive script, reading "Dana L. Christensen". The signature is written in black ink and is positioned above a horizontal line.

Dana L. Christensen, Chief Judge  
United States District Court